## YONG YOKE SUNG & ORS. v. SUNGEI WAY ESTATE

[A.C.J. (Ong J.) June 17, 1965]

[K.L. — Civil Appeal No. 7 of 1965]

*Master and servant — Disobedience to lawful order — Dismissal for misconduct — Employment Ordinance, 1955, ss. 14(1), 15 and 16.*

The respondents being dissatisfied with the low yields brought in by some of their rubber tappers issued a notice of transfer of tapping tasks involving some 80 tappers. The appellants (being 29 of these tappers) who had been tapping on certain fields were required to tap other fields as a result of their transfer. They refused and stopped work. The respondents after due warning dismissed them by notice. The appellants thereupon filed their complaint with the commissioner for labour and in the inquiry that followed it was held that the appellants were entitled to the balance of their wages but not to their claim for one month's wages as indemnity in lieu of notice. On appeal,

**Held:** (1) the appellants' refusal to work must clearly be regarded as a repudiation by them of the contract of service justifying summary dismissal;

(2) the appellants had failed to discharge the onus of proving that the order of transfer of tapping tasks was unreasonable or given *mala fide* and therefore they had no reasonable cause to absent themselves from work without leave.

[**Editorial Note:** As we go to press we learn that the appellants' appeal to the Federal Court has been dismissed. The judgment of the Federal Court will be reported in due course.]

*Case referred to:—*

(1) *Laws* v. *London Chronicle Ltd.* [1959] 1 W.L.R. 698, 701.

CIVIL APPEAL.

*Miss P. G. Lim* for the appellants.

*S. D. K. Peddie* for the respondents.

*Cur. Adv. Vult.*

**Ong J.:** This is an appeal against the decision of the junior assistant commissioner for labour, Port Swettenham, dismissing a claim by the appellants to one month's wages as indemnity in lieu of notice.

The material facts are not in dispute. The respondents, being dissatisfied with the low yields brought in by their Chinese tappers, published on July 25, 1963 a warning notice of their intention to test tap all fields tapped by Chinese and to dismiss, with one month's notice, all those unable to bring in the assessed yield. The notice went on to state that "any tapper who is not willing to work under the above terms will be paid off immediately on request with one month's pay." No one objected or asked to be paid off. On September 10, 1963 the respondents' manager posted up a notice of transfer of tapping tasks involving about 80 tappers. The 29 appellants had been tapping on Fields 47, 32, 29 & 30 up to September 30, but on being required to tap fields 48/52 on October 1, they refused and stopped work from that date onwards.

At a meeting between the management and the dissentient labourers on October 7, the latter were told that if they persisted in their refusal to tap their new tasks on the following day, they would be treated as having broken their contract of service, but, in the event of their going back to work, their failure to work between October 1 and 7 would be overlooked. The tappers, however, demanded to be returned to their previous tasks which had already been allotted to Indian tappers. As they continued in their refusal to work, the appellants were dismissed by a notice given on October 14. They duly filed their complaint under section 70 of the Employment Ordinance, 1955, and in the inquiry that followed the junior assistant commissioner for labour held that they were only entitled to the balance of wages earned (which was admitted by the respondents) but not to their claim for one month's wages as indemnity in lieu of notice.

The sole issue which the labour commissioner considered raised before him was whether the tappers, by failing to work between October 1 and 7, 1963, had broken their contracts of service. For the employers it had been submitted that, the transfer being a legitimate order, it was not within the jurisdiction of the commissioner to consider whether the transfer order was justified. On the other hand, it was argued, for the labourers, that apart from the legality of the order what fell to be considered was the further question whether the order was reasonable or *bona fide*. The *ratio decidendi* of the commissioner's decision is to be found in these words:

> "If as admitted by the complainants the manager was entitled under the contracts of service to send tappers to any tasks in his estate it is no part of my duty as a junior assistant commissioner to decide whether the transfer was reasonable and/or *bona fide*."

He went on, however, in his grounds of decision to say —

> "The refusal of the complainants to work on and after 1st October 1963 amounts to a breach of their contracts of service under section 15 unless:
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> (a) they had been given leave by the employer and
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> (b) they had a reasonable excuse for not working. The words reasonable excuse refer to such reasons as illness, inability or reasons beyond the labourers control to work. The fact that the complainants did not like the transfer is not a 'reasonable excuse'. No other acceptable excuse was given in evidence. The defendant did not grant leave to the complainants. There was no strike. As the order was a lawful one, I consider that the failure of the complainants to work on and after 1st October 1963 was a breach of contract of service.
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> Counsel for the complainants has submitted that section 15 does not apply because the notice of dismissal was for not obeying a normal order. But this notice (Exhibit C2) refers also to the complainants absenting themselves from work. It also says that the complainants have broken their contracts of service with the estate as from 1st October 1963. As an enforcement officer

of labour laws I cannot agree that section 15 does not apply in this case.

Counsel for the complainants also submitted that the defendant committed a breach of section 16 which requires the employer to provide labourers with work 'suitable to their capacity'. This refers to physical capacity and endurance to work and not to skill or experience. These are not defined in the Ordinance. The complainants were employed as tappers. They were given work as tappers. They refused to work as tappers."

In my opinion what is set out above is not open to any real criticism. The relevant provisions of the Ordinance are sections 14(1), 15 and 16:—

14. (1) An employer may terminate the contract of service of a labourer without notice on grounds of such labourer's misconduct.

xx xx xx xx

15. A contract of service shall be deemed to be broken by the labourer if he is continously absent from work for more than one day without leave from his employer and without reasonable excuse.

16. (1) Where a labourer is employed in any agricultural undertaking on an estate on a contract of service under which he earns wages calculated by reference to the number of days' work performed in each month of his service, his employer shall be bound either to provide him with work suitable to his capacity on not less than twenty-four days in each month during the whole of which he is so employed, or if the employer is unable or fails to provide work on twenty-four days in each month whereon the labourer is willing and fit to work, the employer shall nevertheless be bound to pay to the labourer in respect of each of such days wages at the same rate as if such labourer had performed a day's work:

Provided that any dispute as to whether a labourer was willing or fit to work shall be referred to the commissioner for his decision:

Provided further that in computing twenty-four days for the purpose of this sub-section account shall not be taken of more than six days in any week.

(2) A contract of service shall be deemed to be broken by an employer if he fails to provide work or pay wages in accordance with sub-section (1) of this section.

These sections merely enact what is the common law in England regarding master and servant. On these points I quote from 25 *Halsbury* (3rd Edition) page 485:

"Wilful disobedience to the *lawful and reasonable* order of the master justifies summary dismissal. A servant is not, however, bound to obey orders to do something not properly appertaining to the *character or capacity* in which he was hired; and an order which involves a reasonable apprehension of danger to the life or person of the servant is an unlawful order and one to which the servant is justified in refusing to obey.

Misconduct, inconsistent with the due and faithful discharge by the servant of the duties for which he was engaged, is good cause for his dismissal, but there is no fixed rule of law defining the degree of misconduct which will justify dismissal."

Applying the law to the facts of this case, I think the appellants' refusal to work — persisted in after the offer made to overlook their lapse from October 1 to 7 — must clearly be regarded as a repudiation by them of the contract of service justifying summary dismissal. The disobedience here went to the very root of the contract of service, it was blatant and in no way comparable to that in *Laws* v. *London Chronicle Ltd.*[1] where Lord Evershed M.R. said:

"I think it is not right to say that one act of disobedience, to justify dismissal, must be of a grave and serious character. I do, however, think....that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of its essential conditions...."

The appellants, however, had sought to justify their refusal to tap the new tasks on various grounds. Assuming that they succeeded, then, of course, they would not have been liable to summary dismissal for misconduct or disobedience of their employers' orders. It follows, therefore, that it was pertinent and, indeed, the labour commissioner's duty, to decide on the question of fact whether, in absenting themselves from work without leave, the appellants had "reasonable excuse" (section 15) and, arising out of that question, the further question whether the work provided for them in their new tasks was "suitable" to their "capacity" (section 16).

The labour commissioner did, in fact, consider whether there had been reasonable excuse — though on a rather restricted interpretation of those words. What constitutes a reasonable excuse must necessarily be decided on the facts and circumstances of each particular case. The question whether experienced tappers like the appellants should have been put to a task beneath their capacity is, in my view, something that fell to be considered with other material facts in deciding whether the order was reasonable. Their complaint was that they were transferred to slaughter-tap old trees of low yield, using ladders, which would be dangerous to female tappers. Having considered all the evidence I think it is important to remember that female Indian tappers had been tapping on those fields without accident, and without making any complaints. I do not consider that the appellants had any ground for demanding preferential treatment over their Indian counterparts. Nor do I consider them entitled to dictate to the management. In my view the appellants could only have justified their action if they had obeyed the order for at least a few days, and then, on the basis of the yield, put up their case for a transfer if their earnings were shown to have been seriously reduced. The appellants on the evidence have failed to discharge the onus of proving that the order was unreasonable or given *mala fide*. In the result the labour commissioner had come to a right decision and I would dismiss this appeal.

*Appeal dismissed.*

Solicitors: *P. G. Lim; Skrine & Co.*